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(SPACE BELOW FOR FILING STAMP ONLY)

6 15611

Attorney for Plaintiff

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SAN DIEGO

9  
10 CINEMATRONICS, INC.,  
11 a California corporation,

12 Plaintiff,

13 v.

14 VECTORBEAM, a California  
15 corporation; EXIDY, INCORPORATED,  
16 a California corporation;  
17 and DOES I through X, inclusive,

18 Defendants.  
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Case No. 451437

DECLARATION OF  
JAMES PIERCE

I, JAMES PIERCE, declare:

I

I am President of CINEMATRONICS, INC. the plaintiff herein.  
I have personal knowledge of the following and if called as a  
witness could testify competently thereto.

II

Gilbert J. Levine was the former General Manager and Chief  
Financial Officer of VECTORBEAM. On or about October 4, 1979 Mr.

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3 Levine tendered his written resignation as both Chief Financial  
4 Officer and General Manager of VECTORBEAM. His resignation was  
5 accepted by the Board of Directors and thereafter his employment  
6 pursuant to his contract was terminated. No further contracts  
7 with Mr. Levine were entered into. A copy of said resignation,  
8 designated EXHIBIT "A", is attached hereto and by reference made  
9 a part hereof as if fully set forth herein at length.

10 Mr. Kauffman sets forth in his Declaration that Mr. Levine  
11 is currently making a claim against EXIDY and/or VECTORBEAM pur-  
12 suant to an employment contract. As is obvious from EXHIBIT "A"  
13 Mr. Levine terminated his services immediately prior to the sale  
14 of VECTORBEAM to EXIDY. I do not know upon what basis Mr. Levine  
15 could make a claim for wages pursuant to his contract, if he is  
16 making one at all. Mr. Kauffman provides no evidence of such  
17 claim with his Declaration.

18 Defendants' counsel sets forth in his statement of facts  
19 that CINEMATRONICS gave a written indemnification to EXIDY regard-  
20 ing the purported Levine employment contract. There is attached  
21 to the pleading a photocopy of a handwritten document apparently  
22 signed by Mr. Kauffman and Mr. DeCaro which document I <sup>NAO</sup> never  
23 seen and I <sup>NAO</sup> have no knowledge of <sup>prior to 4/3/80.</sup> As President of CINEMATRONICS  
24 and a member of the Board of Directors I can state truthfully that  
25 such indemnification was never <sup>authorized</sup> and Mr. DeCaro was never  
26 authorized to enter into any such agreement on behalf of CINEMA-  
27 TRONICS.

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III

Mr. Kauffman sets forth in his Declaration that he has made several requests of CINEMATRONICS to execute a subordination agreement lowering the priority of our obligations in relation to their receivable financing through Bank of America. Mr. Kauffman neglects to inform the Court that he has never made a tender of funds which would satisfy the balance due. Mr. Kauffman has demanded that we sign the subordination agreement and subsequent to the signing thereof he will pay the funds. Mr. Kauffman is currently in arrears on the purchase money note in excess of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) on the purchase and sale of VECTORBEAM, he has failed and refused to provide proper and acceptable accounting for the number of units sold since his company has operated VECTORBEAM and he then expects me to execute a subordination agreement weakening substantially our creditor position in exchange for a mere promise to pay the funds which he is already obligated to do. I refuse to execute the subordination agreement and continue to do so until EXIDY and VECTORBEAM bring current all payments under both the promissory note, and the patent license agreement together with a complete accounting of all units sold. I believe I have acted as any other reasonable business man would have in the same situation. Defendants' counsel in his memorandum of law stresses the fact that our refusal to sign the subordination agreement was in flagrant violation of the license contract. No comment is made though on the neglect and refusal of VECTORBEAM and/or EXIDY to provide a complete accounting of all units sold under the license agreement or their own refusal

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3 to honor their obligation under the purchase money promissory  
4 note.

5 IV

6 Mr. Kauffman indicates in his Declaration that EXIDY had no  
7 opportunity to perform an inventory on the assets of VECTORBEAM.  
8 Moreover, it is stated that CINEMATRONICS maintained to EXIDY that  
9 a minimal amount of inventory was obsolete and/or unusable.

10 Mr. Kauffman's statement is a lie. On December 1, 1979 Mr.  
11 Kauffman accompanied by the accountant for EXIDY together with  
12 three (3) or four (4) employees spent four (4) to five (5) hours  
13 very carefully taking inventory all the assets of VECTORBEAM.  
14 Prior to this CINEMATRONICS offered at its own expense to have  
15 Rhodes and DeWitt perform a certified inventory for the benefit  
16 of EXIDY but Mr. Kauffman indicated that by reason of the fact  
17 that VECTORBEAM was only fifteen (15) miles from the office of  
18 EXIDY and since they were both in the same business i.e. manu-  
19 facturing video games his employees could produce an inventory  
20 quicker and at a much lesser cost than Rhodes and DeWitt. In  
21 furtherance of this agreement the above described inventory was  
22 carried out.

23 At all times when CINEMATRONICS owned VECTORBEAM we had  
24 month-end inventories. The month-end inventory for November, 1979  
25 matched the inventory that EXIDY performed on December 1, 1979  
26 except for some minor variances which would be expected in this  
27 sort of situation. After performing the inventory neither Mr.  
28 Kauffman, his accountant nor any of the employees made any comment

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3    regarding any obsolescence of any assets. Mr. Kauffman stated that  
4    the inventory was acceptable to EXIDY.

5    Moreover, on Page 4, Paragraph 6 of the Stock Purchase Agree-  
6    ment the parties set forth as follows:

7    "However, if after the close, and before March  
8    1, 1980, EXIDY believes that adjustments are nec-  
9    essary based on an overstatement of the accounts  
10    receivable, or a material omission of notes payable  
11    or accounts payable and/or significant inventory  
12    shortages, then EXIDY shall so advise CINEMATRONICS,  
13    specifying the reasons and grounds for the proposed  
14    adjustments. The parties agree that adjustments plus  
15    or minus Fifty Thousand Dollars (\$50,000) are not  
16    material and adjustments based on inventory 'write  
17    downs' (not based on physical shortages) will not be  
18    applicable to any valuation adjustment for the pur-  
19    poses of this agreement."

20    As set forth above there shall be no adjustments based upon  
21    inventory "write downs". Write downs is an industry-wide term  
22    meaning equipment which may or may not be obsolete. In the video  
23    game industry a new game may reach its peak popularity in five (5)  
24    or six (6) weeks and thereafter decline. The total commercial  
25    life span of video games is usually measured in months. As a  
26    result it is incumbent upon manufacturers in our industry to  
27    constantly produce new games and new ideas. As a result of the  
28    above various parts which are necessary for the manufacture of  
29    one (1) game would be unusable for a new game being manufactured  
30    several months later. In that limited sense these parts may be  
31    deemed "obsolete". Several months thereafter the company may be  
32    producing an entirely new game where these particular parts will  
33    be required and they will no longer be deemed obsolete therefore  
34    the term obsolescence is very difficult to apply to our industry.

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3 Additionally, if we manufacture a particular game it is necessary  
4 under the various licensing agreements that we maintained a parts  
5 supply for the repair of such games therefore even though parts  
6 are not necessary in the manufacturing process since the particular  
7 game is no longer being produced it is necessary that these parts  
8 be retained for the purposes of repair and maintenance.

9 With the above in mind that it was agreed upon by and between  
10 the parties to the Stock Purchase Agreement that there would be  
11 no adjustments based upon inventory write downs. Defendants now  
12 come before the Court claiming that a good portion of the in-  
13 ventory of VECTORBEAM is obsolete. Their claims should not be  
14 considered by the Court because first they took inventory of all  
15 the physical assets of the corporation prior to purchasing same  
16 and second by agreement obsolescence is not a proper basis to  
17 request an adjustment to the contract.

18 V

19 Defendants and their counsel are attempting to lead the Court  
20 to believe that CINEMATRONICS defrauded EXIDY by selling them a  
21 business consisting of obsolete assets and extensive undisclosed  
22 financial commitments. I must direct the Court's attention to  
23 Mr. Kauffman's Declaration wherein he states that since EXIDY  
24 purchased VECTORBEAM up until April 30, 1980, a period of four  
25 (4) months, VECTORBEAM has sold eight hundred seventy-three (873)  
26 units of Tailgunner II which produced net sales in the amount of  
27 ONE MILLION EIGHT HUNDRED TWENTY-NINE THOUSAND DOLLARS (\$1,829,000).

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3     Additionally there are approximately one hundred twenty-five (125)  
4     units in production soon to be available for sale for a total  
5     four (4) month production run of almost one thousand (1,000) units  
6     which should produce net sales in excess of 2.2 Million Dollars.  
7     As the former owner of VECTORBEAM and the former producer of  
8     Tailgunner. I have personal knowledge of the fact that the net  
9     profit per unit to the company is SEVEN HUNDRED DOLLARS (\$700).  
10    I had recently discussed this fact with Mr. Kauffman and he has  
11    confirmed to me that VECTORBEAM is earning a net profit of SEVEN  
12    HUNDRED DOLLARS (\$700) per unit. With eight hundred seventy-three  
13    (873) units sold and one hundred twenty-five units (125) soon to  
14    be available for sale VECTORBEAM will have a total four (4) month  
15    net return of almost SEVEN HUNDRED THOUSAND DOLLARS (\$700,000).  
16    CINEMATRONICS sold VECTORBEAM to EXIDY in consideration for a  
17    promissory note in face value of FIVE HUNDRED TWENTY-SIX THOUSAND  
18    NINE HUNDRED AND FORTY-TWO DOLLARS (\$526,942). In a four (4)  
19    month period of time VECTORBEAM has produced gross sales in excess  
20    of four (4) times the total purchase price of the company for a  
21    total net return almost one and one-half (1-1/2) times the purchase  
22    price. With all of these funds available to defendants they have  
23    made one (1) payment under the promissory note of THIRTY-FIVE  
24    THOUSAND DOLLARS (\$35,000) and have made one payment under the  
25    license agreement and they have provided no accounting as required  
26    by the agreement.

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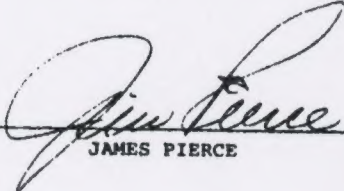
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I declare under penalty of perjury that the foregoing is

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true and correct. Dated this 6th day of May, 1980 in El Cajon,  
California.

  
JAMES PIERCE



# VECTORBEAM

33441 CENTRAL AVE. / UNION CITY, CA 94587 / (415) 488-2000

October 4, 1979

TO: THE BOARD OF DIRECTORS OF VECTORBEAM

RE: RESIGNATION OF GILBERT J. LEVINE

Gentlemen:

Effective immediately, I resign as Chief Financial Officer of Vectorbeam.

Effective as soon as you can select a replacement but in no more than thirty (30) days, I resign as General Manager.

Recently, I proposed a business plan which I believe is in the best interest of Vectorbeam and its shareholder Cinematronics. You have chosen not to adopt that plan. My feeling is that your program should be implemented by a Chief Financial Officer/General Manager who supports and believes in your program.

With all best wishes,

  
Gilbert J. Levine

GJL:ch